

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 488 & 357

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO INSURANCE; REPLACING THE ANNUAL TITLE INSURANCE
HEARING WITH A BIENNIAL HEARING; PROVIDING FOR THE FILING OF
RATES LOWER THAN THE PROMULGATED RATE SUBJECT TO PRIOR
APPROVAL; PROVIDING FOR DISCOUNTED PREMIUMS FOR CERTAIN LOAN
TRANSACTIONS; PROHIBITING INDUCEMENTS FOR THE REFERRAL OF TITLE
BUSINESS; PROVIDING FOR TITLE PREMIUM COMPARISON GUIDES;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-16-17 NMSA 1978 (being Laws 1984,
Chapter 127, Section 283) is amended to read:

"59A-16-17. UNFAIR DISCRIMINATION, REBATES PROHIBITED--
OTHER COVERAGES.--

A. No property, casualty, marine and

.177803.6

underscoring material = new
[bracketed material] = delete

1 transportation, surety, vehicle or title insurer, or nonprofit
2 health care or prepaid dental plan or other insurance-type
3 organization, or any employee or representative thereof, and no
4 broker, agent, solicitor or other representative shall pay,
5 allow or give, or offer to pay, allow or give, directly or
6 indirectly, as an inducement to insurance or coverage, or after
7 insurance or coverage has been effected, any rebate, discount,
8 abatement, credit or reduction of the premium named in a
9 policy, or any special favor or advantage in the dividends or
10 other benefits to accrue thereon, or any valuable consideration
11 or inducement whatever, not specified or provided for in the
12 policy, except to the extent provided for in an applicable
13 filing with the superintendent as provided by law.

14 B. No title insurer or title insurance agent shall:

15 (1) pay, directly or indirectly, to the
16 insured or any person acting as agent, representative, attorney
17 or employee of the owner, lessee, mortgagee, existing or
18 prospective, of the real property, or interest therein, [~~which~~]
19 that is the subject matter of title insurance or as to which a
20 service is to be performed any commission or part of its fee or
21 charges or other consideration as inducement or compensation
22 for the placing of any order for a title insurance policy or
23 for performance of any escrow or other service by the insurer
24 with respect thereto; [~~or~~]

25 (2) issue any policy or perform any service in

1 connection with which it or any agent or other person has paid
2 or contemplates paying any commission, rebate or inducement in
3 violation of this section;

4 (3) give or receive, directly or indirectly,
5 any consideration or thing of value for the referral of title
6 insurance business or escrow or other service provided by a
7 title insurer or title insurance agent unless otherwise
8 permitted by regulation of the superintendent; or

9 (4) enter into a reinsurance agreement with an
10 affiliate of a real estate developer, real estate agency,
11 mortgage lender or referrer of title business without the prior
12 written approval of the superintendent.

13 C. No insured named in a policy or any employee
14 [~~or~~] of such insured shall knowingly receive or accept,
15 directly or indirectly, any such rebate, discount, abatement,
16 credit or reduction of premium, or any such special favor or
17 advantage or valuable consideration or inducement.

18 D. No such insurer or organization shall make or
19 permit any unfair discrimination between insureds or property
20 having like insuring or risk characteristics, in the premium or
21 rates charged for insurance or coverage, or in the dividends or
22 other benefits payable thereon or in any other of the terms and
23 conditions of the insurance or coverage.

24 E. Nothing in this section shall be construed as
25 prohibiting the payment of commissions or other compensation to

.177803.6

1 licensed agents, brokers, solicitors or other representatives;
2 or as prohibiting the extension of credit to an insured for the
3 payment of any premium and for which credit a reasonable rate
4 of interest is charged and collected; or as prohibiting any
5 insurer or agent from allowing or returning to its
6 participating policyholders, members or subscribers, dividends,
7 savings or unabsorbed premium deposits. As to title insurance,
8 nothing in this section shall prohibit bulk rates or special
9 rates for customers of prescribed classes if such bulk or
10 special rates are provided for in the currently effective
11 schedule of fees and charges of the title insurer as filed with
12 the superintendent.

13 F. This section does not apply to wet marine and
14 transportation insurance."

15 Section 2. Section 59A-17-11.1 NMSA 1978 (being Laws
16 2007, Chapter 367, Section 6) is amended to read:

17 "59A-17-11.1. CONSUMER INFORMATION.--

18 A. The superintendent shall use, develop or cause
19 to be developed a consumer information system that will provide
20 and disseminate price and other relevant information on a
21 readily available basis to purchasers of homeowners, private
22 passenger non-fleet automobile or property insurance for
23 personal, family or household needs as well as for title
24 insurance, including escrow, closing and settlement charges for
25 one to four family residential property transactions, and for

.177803.6

1 any other types of personal or commercial insurance designated
 2 by the superintendent. To the extent deemed necessary and
 3 appropriate by the superintendent, insurers, advisory
 4 organizations and other persons or organizations involved in
 5 conducting the business of insurance in New Mexico, to which
 6 this section applies, shall cooperate in the development and
 7 utilization of a consumer information system.

8 B. An insurer writing homeowners insurance or
 9 private passenger non-fleet automobile insurance in New Mexico
 10 shall, upon renewal or upon the transfer of a policy to another
 11 insurer under the same ownership or management as the
 12 transferring insurer, provide its policyholders with written
 13 notification of their right to obtain from the insurer a
 14 detailed written explanation of the reasons why their policy
 15 premium has changed or is about to change."

16 Section 3. Section 59A-30-1 NMSA 1978 (being Laws 1985,
 17 Chapter 28, Section 1) is amended to read:

18 "59A-30-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,
 19 Article 30 NMSA 1978 may be cited as the "New Mexico Title
 20 Insurance Law"."

21 Section 4. Section 59A-30-2 NMSA 1978 (being Laws 1985,
 22 Chapter 28, Section 2) is amended to read:

23 "59A-30-2. PURPOSE AND LEGISLATIVE INTENT OF ARTICLE.--

24 A. The purpose of the New Mexico Title Insurance
 25 Law is to provide a comprehensive body of law for the effective

.177803.6

1 regulation and active supervision of the business of title
2 insurance transacted within this state in [~~response to~~
3 accordance with the McCarran-Ferguson Act (P.L. 79-15, 15
4 U.S.C. Sections 1011-1015)

5 B. The legislature intends that the business of
6 title insurance be [~~totally~~] regulated by the state to provide
7 for the protection of consumers and purchasers of title
8 insurance policies and the financial stability of the title
9 insurance industry.

10 C. The legislature intends that the title insurance
11 market be competitive for all title insurance agents, that
12 regulation of the title insurance industry does not
13 disproportionately impact independent title agencies and that
14 regulation of the industry does not place independent title
15 insurance agents at a competitive disadvantage with
16 underwriter-owned title companies."

17 Section 5. Section 59A-30-3 NMSA 1978 (being Laws 1985,
18 Chapter 28, Section 3, as amended) is amended to read:

19 "59A-30-3. DEFINITIONS.--As used in the New Mexico Title
20 Insurance Law:

21 A. "agency agreement" means a document executed by
22 a title insurer and title insurance agent [~~which~~] that defines
23 the compensation of the title insurance agent and the scope of
24 the title insurance agent's authority;

25 B. "basic premium rate" means the premium rate for
.177803.6

underscoring material = new
[bracketed material] = delete

1 an original owner's policy of title insurance;

2 ~~[B.]~~ C. "business of title insurance" means:

3 (1) issuing as title insurer or offering to
4 issue as title insurer a title insurance policy; or

5 (2) transacting or proposing to transact by a
6 title insurer or title insurance agent any of the following
7 activities when conducted or performed in contemplation of the
8 issuance of a title insurance policy:

9 (a) soliciting or negotiating the
10 issuance of a title insurance policy;

11 (b) guaranteeing, warranting or
12 otherwise insuring the correctness of title searches;

13 (c) executing ~~[of]~~ title insurance
14 policies;

15 (d) effecting contracts of reinsurance;

16 (e) abstracting, searching or examining
17 titles; or

18 (f) doing or proposing to do any
19 business in substance equivalent to the business of title
20 insurance in a manner designed to evade the provisions of the
21 New Mexico Title Insurance Law or other laws applicable to the
22 business of title insurance;

23 ~~[C.]~~ D. "charge" means any consideration, other than
24 premiums billed by a title insurance agent or title insurer or
25 both, for the performance of services, including but not

.177803.6

1 necessarily limited to:

2 (1) consideration for the supervising or
3 handling of escrows, settlements, closings, preparation of
4 abstracts, delivery or recording of transfer and lien documents
5 and disbursing funds;

6 (2) consideration for services commenced but not
7 completed; and

8 (3) consideration for title searches conducted
9 for a purpose other than issuance of a title insurance policy.
10 [~~but not including~~]

11 "Charge" does not include consideration collected by a
12 title insurer or title insurance agent when the consideration
13 is limited to the amount billed for services rendered by a
14 third party;

15 [~~D.~~] E. "premium" means the consideration for issuing
16 a title insurance policy and includes the consideration for
17 searching and examining a title when conducted or performed for
18 the purpose of the issuance of a title insurance policy;

19 [~~E.~~] F. "available funds" means funds subject to
20 immediate withdrawal by cash or check in a depository account
21 with a financial institution, held in the name of and subject
22 to the control of a title insurance agent, title insurer or
23 third party fiduciary, not including a person or entity that is
24 a party to the transaction, cooperating in the closing of a
25 transaction with a title insurance agent or title insurer;

.177803.6

1 ~~[F.]~~ G. "title insurance agent" means a person
2 licensed as an agent under the Insurance Code and appointed by
3 a title insurer;

4 ~~[G.]~~ H. "title insurance policy" or "policy" means a
5 contract indemnifying against loss or damage arising from any
6 of the following ~~[which]~~ that exist on or before the effective
7 date of the policy:

- 8 (1) defects in the insured title;
- 9 (2) liens or encumbrances on the insured title;
- 10 (3) unmarketability of the insured title; ~~[or]~~
- 11 (4) invalidity or unenforceability of liens or
12 encumbrances on the property ~~[which]~~ that is the subject of the
13 policy; or
- 14 (5) lack of legal right of access to and from
15 the property.

16 "Title insurance policy" or "policy" does not include an
17 abstract; and

18 ~~[H.]~~ I. "title insurer" means any person authorized
19 under the laws of this state to transact as insurer the
20 business of title insurance."

21 Section 6. Section 59A-30-4 NMSA 1978 (being Laws 1985,
22 Chapter 28, Section 4) is amended to read:

23 "59A-30-4. CONTROL AND SUPERVISION BY SUPERINTENDENT.--

24 A. Title insurers and title insurance agents shall
25 operate in New Mexico under the control and supervision of the

.177803.6

underscored material = new
[bracketed material] = delete

1 superintendent. The superintendent shall promulgate such rules
2 and regulations as are necessary to carry out the provisions of
3 the New Mexico Title Insurance Law [~~including rules and~~
4 ~~regulations requiring uniform forms of policies and uniform~~
5 ~~premiums~~]. The superintendent may adopt uniform rules and
6 regulations [~~as~~] to address underwriting standards and
7 practices, including but not limited to rules and regulations
8 [~~which~~] that prohibit title insurers from insuring specified
9 risks [~~which~~] that the superintendent determines may pose an
10 unreasonable risk to the financial stability of title insurers.

11 B. No title insurer or title insurance agent shall
12 collect any premium, issue any title insurance policy or agency
13 agreement, or reinsure any portion of the risk assumed under
14 any title insurance policy, other than in conformance with the
15 New Mexico Title Insurance Law and rules and regulations
16 adopted by the superintendent as authorized by the New Mexico
17 Title Insurance Law."

18 Section 7. Section 59A-30-6 NMSA 1978 (being Laws 1985,
19 Chapter 28, Section 6, as amended) is amended to read:

20 "59A-30-6. PREMIUMS--AGENCY AGREEMENTS--DUTY TO [~~FIX~~]
21 PROMULGATE REASONABLE RATES--EXCEPTION.--

22 A. The superintendent shall promulgate the premium
23 rates of title insurers and title insurance agents for title
24 insurance policies and the percentage of premium to be retained
25 by title insurers under agency agreements, except that premium

.177803.6

1 rates for reinsurance as between title insurers shall not be
 2 promulgated by the superintendent. No premium that has not
 3 been promulgated or approved by the superintendent shall be
 4 charged for any title insurance policy. The superintendent
 5 shall not promulgate charges of title insurers and title
 6 insurance agents other than premium rates for title insurance
 7 policies and the percentage of premium to be retained by title
 8 insurers under agency agreements.

9 B. The superintendent shall promulgate additional
 10 premium rates for searches or examinations of title conducted
 11 or performed for the purpose of issuance of a title insurance
 12 policy when the search or examination involves more than one
 13 chain of title or other unusual complexity.

14 C. Premium rates promulgated by the superintendent
 15 shall not be excessive, inadequate or unfairly discriminatory
 16 and shall contain an allowance permitting a profit that is not
 17 unreasonable in relation to the [~~riskiness of~~] risks incurred
 18 in the business of title insurance. Premium rates may include
 19 an allowance for recoupment of assessments made pursuant to the
 20 Title Insurance Guaranty Act.

21 D. Title insurance agents shall retain not less than
 22 eighty percent of the gross premiums collected on commitments,
 23 policies and endorsements issued for one to four family
 24 residential property transactions with a liability amount of
 25 not more than two million dollars (\$2,000,000); provided,

.177803.6

1 however, that from July 1, 2009 until otherwise ordered by the
2 superintendent, title insurance agents shall retain not less
3 than eighty-one percent of the gross premiums collected on
4 commitments, policies and endorsements issued for one to four
5 family residential property transactions with a liability
6 amount of not more than two million dollars (\$2,000,000). The
7 portion of the premium to be retained by the title insurance
8 agent for policies with a liability amount greater than two
9 million dollars (\$2,000,000) shall be set by rule.

10 E. A title insurer may file with the superintendent
11 proposed title insurance rates for a specific county or
12 counties lower than the premium rate promulgated by the
13 superintendent. The superintendent shall provide notice of the
14 filed title insurance rates to all agents and underwriters
15 doing business in that county or counties and may conduct a
16 hearing. In determining whether to approve filed title
17 insurance rates, the superintendent shall consider the
18 interests and protection of consumers and independent title
19 insurance agents and the potential impact on competition within
20 the title insurance industry. Upon approval of the filed title
21 insurance rates, the title insurer and its agents shall use the
22 filed and approved title insurance rates.

23 F. The superintendent shall adopt rules to establish
24 standards and procedures by which a title insurance rate lower
25 than the promulgated rate shall be filed and may be approved."

1 Section 8. A new section of the New Mexico Title
 2 Insurance Law, Section 59A-30-6.1 NMSA 1978, is enacted to
 3 read:

4 "59A-30-6.1. [NEW MATERIAL] PREMIUMS--REFINANCED
 5 PROPERTY.--The premium rates for title insurance policies
 6 issued in connection with the refinance of an existing mortgage
 7 or deed of trust, where a prior loan policy has been issued and
 8 a copy of the policy or a closing statement evidencing the
 9 issuance of the policy is furnished to the insurer or title
 10 insurance agent showing title vested in the same borrower and
 11 covering the same property, shall not exceed the percentage of
 12 the basic premium rate promulgated or approved by the
 13 superintendent as follows:

14 A. forty percent of the current basic premium rate
 15 applied to any amount up to the amount of the previous policy
 16 insuring the mortgage or deed of trust being refinanced, if the
 17 new policy is issued within three years from the date of the
 18 prior policy;

19 B. fifty percent of the current basic premium rate
 20 applied to any amount up to the amount of the previous policy
 21 insuring the mortgage or deed of trust being refinanced, if the
 22 new policy is issued more than three years but less than five
 23 years from the date of the prior policy;

24 C. sixty percent of the current basic premium rate
 25 applied to any amount up to the amount of the previous policy

.177803.6

underscored material = new
 [bracketed material] = delete

1 insuring the mortgage or deed of trust being refinanced, if the
2 new policy is issued more than five years but less than ten
3 years from the date of the prior policy;

4 D. eighty percent of the current basic premium rate
5 applied to any amount up to the amount of the previous policy
6 insuring the mortgage or deed of trust being refinanced, if the
7 new policy is issued more than ten years but less than twenty
8 years from the date of the prior policy; or

9 E. the premium for insurance coverage above the
10 amount of the previous policy shall be ninety percent of the
11 current basic premium rate as set by rule. In no event shall
12 the premium collected be less than the minimum premium based on
13 the promulgated or approved rate for a loan policy."

14 Section 9. A new section of the New Mexico Title
15 Insurance Law, Section 59A-30-6.2 NMSA 1978, is enacted to
16 read:

17 "59A-30-6.2. [NEW MATERIAL] PREMIUMS--INDIAN NATION,
18 TRIBE OR PUEBLO TRUST PROPERTY.--Title insurance policies
19 purchased in association with the acquisition of title to
20 property by the United States in trust for a federally
21 recognized Indian nation, tribe or pueblo located wholly or
22 partially in New Mexico where no monetary consideration is
23 paid, shall be issued subject to the promulgated or filed and
24 approved premium rates for the original issuance of a title
25 insurance policy on the same property for an amount equal to
 .177803.6

underscoring material = new
[bracketed material] = delete

1 the reduced liability limit for the acquisition provided for by
 2 the United States department of justice, unless a higher
 3 liability amount is required by the United States."

4 Section 10. Section 59A-30-7 NMSA 1978 (being Laws 1985,
 5 Chapter 28, Section 7) is amended to read:

6 "59A-30-7. REPORTING OF EXPERIENCE.--The superintendent
 7 shall promulgate reasonable rules, including rules providing
 8 statistical plans, for use thereafter by all title insurers and
 9 title insurance agents in the recording and reporting of
 10 revenue, loss and expense experience so that the experience of
 11 title insurers and title insurance agents may be made available
 12 to [~~him~~] the superintendent at least annually in such form and
 13 detail as may be necessary to aid [~~him~~] the superintendent in
 14 promulgating or approving premium rates."

15 Section 11. Section 59A-30-8 NMSA 1978 (being Laws 1985,
 16 Chapter 28, Section 8, as amended) is amended to read:

17 "59A-30-8. HEARINGS--NOTICE.--

18 A. The superintendent shall [~~hold an annual~~] commence
 19 a hearing during November of each odd-numbered calendar year to
 20 consider promulgation of premium rates and any other matters
 21 related to the regulation of the business of title insurance
 22 deemed necessary by the superintendent.

23 B. The superintendent may, in [~~his~~] the
 24 superintendent's discretion, hold a public hearing at any time
 25 to consider promulgation of premium rates and such other

.177803.6

underscored material = new
 [bracketed material] = delete

1 matters and subjects related to the regulation of the business
2 of title insurance as the superintendent shall determine
3 necessary or proper.

4 C. Notice of the public hearings provided for in
5 Subsections A and B of this section shall be as provided in
6 Subsection A of Section 59A-4-16 NMSA 1978.

7 D. The superintendent may promulgate premium rates
8 and forms of title insurance policies only after a public
9 hearing as provided in Subsections A and B of this section.

10 E. After the collection of all evidence relevant to
11 the hearing, the superintendent shall file a notice of closure
12 of the administrative record. The superintendent shall issue
13 [~~his~~] a decision within sixty days following the [~~conclusion of~~
14 a] filing of the notice of closure of the administrative record
15 for the public hearing provided for in Subsections A and B of
16 this section. However, if the superintendent determines that
17 the data and information presented to the superintendent
18 pursuant to Section 59A-30-7 NMSA 1978 [~~is~~] are incomplete,
19 inaccurate or otherwise insufficient to determine whether [~~the~~]
20 a change in rates is warranted, the superintendent shall
21 require [~~the title insurers or the title agents or both~~] a
22 party, intervenor or participant at the public hearing to
23 furnish the additional necessary data and information, and, in
24 such event, the period of time allowed for the superintendent
25 to issue [~~his~~] a decision shall commence from the date such

.177803.6

1 additional data and information [~~is~~] are furnished."

2 Section 12. Section 59A-30-9 NMSA 1978 (being Laws 1985,
3 Chapter 28, Section 9, as amended) is amended to read:

4 "59A-30-9. REVIEW--APPEALS.--A person aggrieved by an
5 order of the superintendent promulgating, approving or
6 disapproving rates under the New Mexico Title Insurance Law
7 shall have the rights to review and appeal provided for in
8 Sections 59A-17-34 and 59A-17-35 NMSA 1978. The request for
9 review shall be filed no later than thirty days after the
10 superintendent's issuance of the order that promulgated,
11 approved or disapproved the rates."

12 Section 13. A new section of the New Mexico Title
13 Insurance Law is enacted to read:

14 "[NEW MATERIAL] REPORTING BY SUPERINTENDENT.--The
15 superintendent shall compile a report for the commission and
16 the legislature no later than October 1 each year beginning in
17 2010 detailing title insurance statistics, including a report
18 on the status of price competition within the title insurance
19 industry in New Mexico. Annual reports shall be made available
20 to interested parties and the general public."

21 Section 14. REPEAL.--Section 59A-30-15 NMSA 1978 (being
22 Laws 1985, Chapter 28, Section 16) is repealed.

23 Section 15. SEVERABILITY.--If any part or application of
24 this act is held invalid, the remainder or its application to
25 other situations or persons shall not be affected.

.177803.6

underscoring material = new
[bracketed material] = delete

